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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

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2004 JUL 21 P 4:41
AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF

INTERSECURITIES, INC.
570 Carillon Parkway
St. Petersburg, FL 33716-1202
CRD #16164

DOCKET NO. S-03482A-03-0000

**INTERSECURITIES, INC.'S
MOTION TO COMPEL**

GREGORY RUSSELL BROWN and JANE
DOE RUSSELL, husband and wife
16417 South 15th Drive
Phoenix, AZ 85045
CRD #2233684

Arizona Corporation Commission

DOCKETED

JUL 21 2004

Respondents.

DOCKETED BY

CR

Pursuant to the Rules of Practice before the Arizona Corporation Commission ("the Commission") and Rule 37 of the Arizona Rules of Civil Procedure, Respondent InterSecurities, Inc. ("ISI") submits its Motion to Compel documents responsive to its First Request for Production of Documents ("First Request").

I. Introduction.

In order to lend proper context to the Motion to Compel, ISI will first provide a brief overview of the facts.

The Securities Division alleges that ISI failed to supervise registered representative Gregory Brown in connection with his sales of pay telephones. In addition, the Division alleges

1 that the pay telephones were securities and that ISI, along with Mr. Brown, offered and sold the
2 pay telephones in violation of the Arizona Securities Act.

3 Gregory Brown was a registered representative with ISI from August 1995 until October
4 2001. In April 1999, Mr. Brown submitted an Outside Business Activity request to ISI's
5 Compliance Department for the approval of the sale of ETS and Phoenix pay telephones. Mr.
6 Brown presented Rod Tidwell, Assistant Vice President of ISI's Compliance Department at the
7 time, with due diligence Mr. Brown had conducted on the companies and answered questions that
8 Mr. Tidwell had regarding the products. Mr. Tidwell had been a compliance officer of ISI since
9 October 1995. At the time, Mr. Tidwell had been licensed in the industry since 1956 and had
10 served in various supervisory capacities for at least 18 years. Mr. Tidwell asked Mr. Brown to
11 contact the Division to obtain more information about the companies. Specifically, Mr. Tidwell
12 requested assurances that the Division did not consider the products to be securities.
13

14 Mr. Brown called the Division and spoke with attorney Wendy Coy. According to Mr.
15 Brown:
16

17 April 27th of 1999, I spoke to Wendy on the telephone. I asked her
18 if she knew anything about ETS and Phoenix Telecom. She, I
19 said, I asked her if there had been any problems or complaints, if
20 she knew anything about this program, if there was any problems
21 with it being a security. She first of all said she didn't know of any
22 problems with the companies. She did tell me this. She says, "I've
23 just completed prosecuting two pay phone companies, Pinnacle
24 Pay Phones and Paramount Pay Phones, that were structured as a
25 limited partnership." And she says, "Is it structured as a limited
26 partnership?" No it is not. It is actually filed as a business
27 opportunity, the client owns the asset, and it's not a limited
partnership. She said, "Well then, I don't have a problem." It's
basically, you know, she said as long as it is not a limited
partnership is what basically she really emphasized, and that was
the discussion I had with her.

Testimony of Brown, 54:20-25 to 55:1-16. Brown conveyed this information to ISI Compliance.

1 Ms. Coy was and is an attorney in the enforcement section of the Division. She has been
2 with the Division since 1990, and was very experienced in securities matters when she spoke with
3 Brown. Upon information and belief, on the day that Ms. Coy spoke with Brown she was
4 designated as the individual with authority to respond on behalf of the Division to inquiries from
5 the general public. At no time did Ms. Coy tell Brown that he could not rely on her
6 representations. Had the Division advised Brown of any possibility of problems with these
7 companies, Brown would not have sold the pay telephones and ISI would not have approved this
8 activity as an outside business activity.
9

10 In sum, the Division represented to Brown that the pay telephones were not securities. ISI,
11 in reliance on this representation, approved Brown's sales of these pay telephones as an outside
12 business activity.

13 Mr. Brown then sold the pay telephones through his independent insurance company,
14 Financial Benefits Group, Inc. ISI was not involved in the offer or sales of these products in any
15 manner. ISI did not provide any documents or account statements to pay telephone purchasers; ISI
16 did not receive any remuneration of any kind from these sales; and ISI did not benefit in any way
17 from the telephone transactions. It had no contact with Mr. Brown's customers regarding these
18 products.
19

20 The importance of Mr. Brown's conversation with Ms. Coy cannot be underestimated. The
21 Division specifically mentioned this conversation in the Notice. (*See* Notice of Opportunity for
22 Hearing, page 6 ¶ 21.) The Division alleged as follows:
23

24 On April 28, 1999, Brown responded to ISI that he had spoken
25 with an attorney at the Division named "Wendy," who informed
26 him that certain payphone investments offered in Arizona had
27 problems because they were sold as limited partnerships and/or
securities. Brown extrapolated on Wendy's cautionary statement,
telling ISI in his memo that, because the ETS and Phoenix

1 payphones were not sold as limited partnerships, these payphone
2 sales had no problems. Brown's interpretation was unfounded...

3 The Division has squarely placed Mr. Brown's conversation with Ms. Coy at issue.
4 Further, the Division's interpretation of this conversation conflicts with Mr. Brown's. Mr.
5 Brown's conversation with Ms. Coy is crucial.

6 **II. The First Request for Production of Documents.**

7 Based upon the above, ISI formulated various discovery requests designed to obtain
8 information regarding the Division's policies and procedures for "Attorneys of the Day," along
9 with documents related to Ms. Coy. An outline of the history of the First Request for Production
10 of Documents follows.

11 1. On October 7, 2003, ISI served the First Request for Production of Documents on
12 the Securities Division. ("the Division"). A copy of the First Request is attached hereto as Exhibit
13 A.

14 2. On January 6, 2004, the Division served its response. A copy of the Division's
15 response is attached hereto as Exhibit B.

16 3. Although the Division agreed to produce certain documents, it objected to the
17 production of certain documents. The parties have been unable to resolve this dispute and ISI
18 seeks the Administrative Law Judge's ("ALJ") intervention.¹

19 4. This Motion seeks an order compelling the Division to produce the requested
20 documents as outlined below.
21
22

23
24

¹ The Division has indicated that it has produced some of the disputed documents, but ISI has
25 been unable to locate them. To the extent ISI locates these documents and/or they are
26 subsequently produced by the Division, ISI will withdraw the pertinent part of this motion.
27 Likewise, should the parties resolve any other discovery disputes in the interim, ISI will also
 advise the ALJ. Attached is an affidavit of ISI's counsel avowing that the parties have been unable
 to resolve their discovery dispute.

1 **Request No. 8:** Documents related to any Securities Division policies, procedures,
2 manuals and/or guidelines for handling calls from the public that are referred to a Securities
3 Division attorney or investigator.

4 **Division Response:** The Division objects to the request on the grounds it
5 seeks information that is protected by the attorney-client privilege.
6 Notwithstanding the foregoing objection, the Division has or will provide
7 the requested information relating to this matter except for those
8 documents to which the Division objects for the reasons set forth in the
9 objection discussion section below.

10 Although the objection indicates that the Division “has or will” provide certain
11 information, it has yet to produce any documents. Discovery of the documents relating to the
12 Division’s policies, procedures, manuals and/or guidelines is reasonably calculated to lead to the
13 discovery of admissible evidence. Mr. Brown spoke with Ms. Coy with respect to the telephones
14 at issue in the Notice. Again, the Division specifically included this conversation in the Notice.
15 Mr. Brown obtained advice from Ms. Coy with respect to the Division’s position on these
16 telephones, yet the Division now claims that its attorneys are not permitted to give advice to the
17 public. ISI is entitled to discover the procedures the Division had in place to regulate such
18 communications with the public, and whether Ms. Coy complied with those procedures. These
19 documents are reasonably calculated to lead to the discovery of admissible evidence. The
20 Division’s policies, procedures, manuals and/or guidelines must be produced.

21 **Request No. 9:** Schedule of Securities Division attorneys and investigators “of the day”
22 and/or Division attorneys or investigators who were designated to receive inquiries from the public
23 from January 1, 1999 through June 30, 1999.

24 **Division Response:** The Division has provided the requested documents.

25 Although the response indicates that the Division produced these documents, ISI has yet to
26 receive them. They must be produced.

27 **Request No. 12:** Personnel file for Wendy Coy.

1 **Division Response:** The Division objects to this request on the grounds
2 that it seeks information that is not relevant to the subject matter in the
3 pending action, and disclosure of information that is precluded by law
4 pursuant to A.A.C. R2-5-105.

5 Wendy Coy's personnel file is reasonably calculated to lead to the discovery of admissible
6 evidence. The Division has stated that it attorneys were not permitted to provide advice to the
7 public with respect to certain matters. ISI is entitled to inspect Ms. Coy's personnel file to
8 determine if she has ever been disciplined for misconduct with respect to her performance as
9 "Attorney" or "Officer" of the day. These documents are reasonably calculated to lead to
10 admissible evidence and therefore must be produced.

11 The Division objects that the disclosure of Ms. Coy's personnel file is precluded by A.A.C.
12 R2-5-105. The Division's reliance upon A.A.C. R2-5-105 is misplaced. A.A.C. R2-5-105(E) sets
13 forth the circumstances under which a party may have access to a state employee's personnel file.
14 In particular, the Division may be required to produce the personnel file in response to a court
15 order or subpoena. A.A.C. R2-5-105(E)(4). The ALJ need only order that the Division produce
16 Ms. Coy's personnel file. The Division must produce Ms. Coy's personnel file as it is reasonably
17 calculated to lead to the discovery of admissible evidence.

18 **III. Other Issues.**

19 ISI also made the following discovery request:

20 **Request No. 1 (b):** Any tapes and/or transcripts of tapes and/or memoranda and/or notes
21 and/or transcripts of sworn testimony that in any way memorialize communications between the
22 Securities Division and any entity or individual interviewed and/or contacted in connection with
23 the Securities Division's investigation of ISI or Brown and relating to the allegations set forth in
24 the Notice. This also includes all complaints, correspondence and Examinations Under Oath and,
25 all exhibits thereto.

26 **Division Response:** The Division objects to this request on the grounds of
27 investigative, work product and attorney-client privileges more particularly
 discussed in the objection discussion section below. Notwithstanding the

1 forgoing objections, the Division has and will provide the requested information
2 for all investors and other individuals expected to call as witnesses in this matter.

3 It appears that the Securities Division was going to produce all memoranda of investor
4 interviews, along with all memoranda related to interviews conducted of individuals who will
5 testify at the hearing. ISI has not received any responsive memoranda.²

6 To date, the Division has not produced any of the above documents. The Division,
7 however, has indicated that it will produce these documents, and ISI requests the ALJ to order
8 their prompt production. See Rule 26.1, Ariz. R. Civ. P.

9
10 **IV. Conclusion.**


11 For the forgoing reasons, ISI respectfully requests that the ALJ order the Division to
12 produce the requested documents.

13 RESPECTFULLY SUBMITTED this 19 day of July, 2004.

14 FOWLER WHITE BOGGS BANKER P.A.
15 Burton W. Wiand
16 501 East Kennedy Blvd., Suite 1700
17 Tampa, Florida 33602

18 AND

19 BADE & BASKIN PLC

20 By 
21 Alan S. Baskin
22 80 East Rio Salado Parkway, Suite 515
23 Phoenix, Arizona 85004

24 Attorneys for Respondent
25 InterSecurities, Inc.

26 ² The Division has made available questionnaires that it received from some pay telephone
27 purchasers. The questionnaires do not contain the detailed information usually found in
memoranda.

1 ORIGINAL and thirteen copies of the foregoing
2 hand-delivered this 21st day of July, 2004 to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered
8 this 21st day of July, 2004 to:

9 Matthew Neubert
10 Director of Securities
11 Securities Division
12 Arizona Corporation Commission
13 1300 W. Washington Street
14 Phoenix, AZ 85007

15 Marc Stern
16 Administrative Law Judge
17 Arizona Corporation Commission
18 1200 W. Washington Street
19 Phoenix, AZ 85007

20 COPY of the foregoing mailed
21 this 21st day of July, 2004 to:

22 Pamela Johnson
23 Securities Division
24 Arizona Corporation Commission
25 1300 W. Washington, 3rd Floor
26 Phoenix, AZ 85007

27 Philip Hofling
Securities Division
Arizona Corporation Commission
1300 W. Washington, 3rd Floor
Phoenix, AZ 85007

Brian J. Schulman
Greenberg Traug, LLP
2375 E. Camelback Rd., Suite 700
Phoenix, AZ 85016-9000
Attorneys for Gregory Russell Brown
and Karen Brown

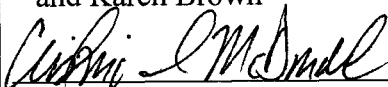


EXHIBIT A

BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCUMENT CONTROL

MARC SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner
KRIS MAYES
Commissioner

IN THE MATTER OF

INTERSECURITIES, INC.
570 Carillon Parkway
St. Petersburg, FL 33716-1202
CRD #16164

DOCKET NO. S-03482A-03-0000

**RESPONDENT INTERSECURITIES,
INC.'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

GREGORY RUSSELL BROWN and JANE
DOE RUSSELL, husband and wife
16417 South 15th Drive
Phoenix, AZ 85045
CRD #2233684

Respondents.

Pursuant to the Rules of Practice before the Arizona Corporation Commission and Rule 34 of the Arizona Rules of Civil Procedure, Respondent InterSecurities, Inc. ("ISI") requests that the documents or things designated in the attached list be produced for inspection and copying.

Except as provided otherwise in the attached list, the time and place of production are:

Time: Forty (40) calendar days from the date of service of this Request unless this time frame is modified by the Administrative Law Judge.

Place: Roshka Heyman & DeWulf, One Arizona Center, 400 East Van Buren Street, Suite 800, Phoenix, Arizona 85004.

The attached list sets forth the items to be produced, either by individual item or by category; describes each item and category with reasonable particularity; and specifies the reasonable time, place and manner of making the production and performing the related acts in connection with each item.

1 The party upon whom this Request is served shall satisfy or object to it in writing within
2 forty (40) days from the date of service of this Request unless this time frame is modified by the
3 Administrative Law Judge.

4 The Response shall state, with respect to each item or category, that the documents will be
5 produced and related activities will be permitted as requested, unless the Request is objected to, in
6 which event the reasons for objection shall be stated.

7 The documents or things sought by this Request include documents, information and things
8 in the possession, custody or control of the Securities Division, their attorneys and all present and
9 former agents, servants, representatives, investigators and others who may have obtained custody
10 of the documents and things on behalf of the party or their attorneys.

11 Unless otherwise indicated, this Request covers the time frame of January 1, 1999 to the
12 present.

13 DEFINITIONS

14 For the purposes of this Request for Production of Documents, the following terms and
15 references have been abbreviated and defined as follows:

16 1. The terms "and" and "or" shall be construed conjunctively or disjunctively,
17 whichever makes the document request more inclusive.

18 2. The terms "Securities Division," "you" and "your" shall mean the Securities
19 Division of the Arizona Corporation Commission.

20 3. The term "Respondent" or "ISI" shall mean InterSecurities, Inc.

21 4. The term "Brown" shall mean Gregory Brown.

22 5. The term "Respondents" shall mean ISI and Gregory Brown.

23 6. The term "Notice" is intended to include the Notice of Opportunity for Hearing for
24 Docket No. S-03482A-03-0000.
25
26
27

1 7. The terms "document" or "documents" include, without limiting their generality, all
2 contracts, agreements, correspondence, letters, files, memoranda, messages, handwritten notes, e-
3 mail, inter- or intra-departmental or office or firm communications, telephone logs, telephone
4 messages, computer disks, hard drives, telegrams, newsletters or other publications, stock
5 certificates, stock options, promissory notes, appraisal reports, expressions of opinion as to value
6 or use of real or personal property, valuation estimates of any kind, financial data, *pro formas*,
7 estimates, financial projections, statements, credit and loan applications, accounting records and
8 worksheets, financial statements, diaries, calendars, logs, desk diaries, appointment books,
9 feasibility studies, recordings, notes of conversations, notes of meetings, notes of conferences,
10 notes of investigations, notes of opinions, notes of interviews, written statements, recorded or
11 taped interviews or statements, drafts of reports, preliminary reports, final reports, studies,
12 forecasts, prospectuses, charts, graphs, maps, drawings or other representations or depictions,
13 telephone records, motion picture film, audio or video tape recordings, facsimile copies, computer
14 printouts, data card programs or other input or output of data processing systems, photographs
15 (positive print, slides or negatives), microfilm or microfiche, or other data compilations from
16 which information can be obtained or translated through detection devices into reasonably usable
17 form, whether originals or copies, altered or unaltered, made by any means. The terms
18 "document" and "documents" also include all copies which are, in any manner, not identical in
19 content to the originals. Any comment or notation appearing on any document, and not a part of
20 the original text, is to be considered a separate "document." Any draft, or any other preliminary
21 form of any document, is also to be considered a separate "document."
22

23 8. The term "all documents" means every document, as defined above, known to you
24 and every document which can be located or discovered by reasonably diligent efforts.
25

26 9. The terms "writing" or "written" are intended to include, but not necessarily be
27

1 limited to, the following: handwriting, typewriting, printing, photographing and every other means
2 of recording upon any tangible thing, any form of communication later reduced to a writing or
3 confirmed by a letter.

4 10. The term "communication" means any oral, written, electronic, graphic,
5 demonstrative, or other transfer of information, ideas, opinions or thoughts between two or more
6 individuals or entities, regardless of the medium by which such communication occurred, and shall
7 include, without limitation, written contact by such means as letters, memoranda, telegrams, telex,
8 or any documents, and oral contact by such means as face to face meetings and telephone
9 conversations.
10

11 11. The terms "concerns" or "concerning" include referring to, alluding to, responding
12 to, relating to, connected with, commenting on, impinging or impacting upon, in respect of, about,
13 regarding, discussing, showing, describing, affecting, mentioning, reflecting, analyzing,
14 constituting, evidencing or pertaining to.
15

16 12. The term "person(s)" shall mean any natural person, corporation, partnership, sole
17 proprietorship, joint venture, association, limited liability company, governmental or other public
18 entity, or any other form of organization or legal entity, and all of their officials, directors, officers,
19 employees, representatives, attorneys and agents.

20 13. The terms "meeting" and "meetings" mean any coincidence of presence of two or
21 more persons between or among whom some communication occurs, whether or not such
22 coincidence of presence was by chance or prearranged, formal or informal, or in connection with
23 some other activity.
24

25 INSTRUCTIONS FOR USE

26 A. In producing documents and things, indicate the particular request to which a
27 produced document or thing is responsive.

1 B. In producing documents and things, furnish all documents or things known or
2 available to you, regardless of whether such documents or things are possessed directly by you or
3 your directors, officers, agents, employees, representatives and investigators or by your attorneys
4 or their agents, employees, representatives or investigators.

5 C. If any requested document or thing cannot be produced in full, produce each such
6 document to the extent possible, specifying each reason for your inability to produce the remainder
7 and stating whatever information, knowledge or belief you have concerning the unproduced
8 portion and the expected dates on which full production can be completed.

9 D. If any documents or things requested were in existence but are no longer in
10 existence, then so state, specifying for each document or thing:

- 11 (1) The type of document or thing;
12 (2) The type(s) of information contained therein;
13 (2) The date upon which it ceased to exist;
14 (4) The circumstances under which it ceased to exist;
15 (5) The identity of each person or persons having knowledge or who
16 had knowledge of the contents thereof; and
17 (6) The identity of each person or persons having knowledge of the
18 circumstances under which each document or thing ceased to
19 exist.

20 E. This Request for Production of Documents is deemed to be continuing. If, after
21 producing documents and things, you obtain or become aware of any further documents, things or
22 information responsive to this Request for Production of Documents, you are required to produce
23 to Respondent such additional documents and things, or provide Respondent with such additional
24 information.

25 F. Documents attached to each other should not be separated.
26
27

1 G. In lieu of producing originals or copies thereof responsive to this Request, you may,
2 at your option, submit legible photographic or other reproductions of such documents, provided
3 that the originals or copies from which such reproductions were made are retained by you until the
4 final disposition of this proceeding.

5 H. In the event that you seek to withhold any documents, things or information on the
6 basis that it is properly subject to some limitation on discovery, you shall supply Respondent with
7 a list of the documents and things for which limitation of discovery is claimed, indicating:
8

- 9 (1) The name of each author, writer, sender or initiator of such
document or thing, if any;
- 10 (2) The name of each recipient, addressee or party for whom such
11 document or thing was intended, if any;
- 12 (3) The name of the person in custody or charge or possession of each
13 such document;
- 14 (4) The date of each such document, if any, or an estimate thereof and
15 so indicated as an estimate;
- 16 (5) The general subject matter as described in each such document,
17 or, if no such description appears, then such other description
sufficient to identify said document;
- 18 (6) The name, business address and position of each person who has
19 seen, or has access to or knowledge of, the contents or nature of
any such document; and
- 20 (7) The claimed grounds for limitation of discovery (e.g., "attorney-
21 client privilege").

22 **DOCUMENTS TO BE PRODUCED**

23 1. The Securities Division's complete investigative file relating to and/or resulting in the
24 commencement of Arizona Corporation Commission Docket No. S-03482A-03-0000. This
25 should include, but not be limited to, the following:

- 26 a. All tapes and/or transcripts of tapes and/or memoranda and/or notes
27 and/or transcripts of sworn testimony that in any way memorialize

- 1 communications between the Securities Division and (i) ISI or
2 Gregory Brown ("Brown") and/or (ii) employees/independent
3 agents/representatives of ISI, including Examinations Under Oath,
4 and all exhibits thereto;
- 5 b. All tapes and/or transcripts of tapes and/or memoranda and/or notes
6 an/or transcripts of sworn testimony that in any way memorialize
7 communications between the Securities Division and any entity or
8 individual interviewed and/or contacted in connection with the
9 Securities Division's investigation of ISI or Brown and relating to
10 the allegations set forth in the Notice. This also includes all
11 complaints, correspondence and Examinations Under Oath, and all
12 exhibits thereto;
- 13 c. All documents in the possession or under the control of the Securities
14 Division relating to ISI or Brown;
- 15 d. All affidavits and statements provided by individuals interviewed or
16 contacted by the Securities Division relating to the allegations set
17 forth in the Notice and/or relating to ISI or Brown;
- 18 e. All correspondence regarding or referring to ISI or Brown;
- 19 f. All documents evidencing telephone calls made by the Securities
20 Division or anyone acting on its behalf to any of the alleged
21 "investors" as set forth in the Notice, including, but not limited to, (i)
22 documents sufficient to identify each telephone call made by the
23 Securities Division, (ii) who authorized each telephone call, (iii) who
24 placed the telephone calls, (iv) the scripts or outlines used by the
25 individuals who placed or received these calls; and (v) any notes,
26 transcripts, tapes or other memoranda memorializing the telephone
27 calls;
- g. All documents sufficient to identify the "49" Arizona investors
referred in paragraph 8 of the Notice. Said documents should
include the name, address, telephone number and/or email address
for these individuals, and the date and amount of each investment;
- h. All subpoenas issued by the Securities Division in this matter and all
documents provided in response to said subpoenas.
2. Copies of all other documents obtained during the Securities Division's investigation that
are not specifically referred to in Request No. 1(a - h) above.
3. Copies of all documents in the possession or under the control of the Securities Division

relating to the investments or accounts of the "investors" referred to in the Notice.

4. Copies of all documents provided by the Securities Division to other state securities agencies and/or law enforcement organizations regarding Brown or ISI, its registered representatives, independent contractors, employees and/or other agents.
5. Copies of all documents provided to the Securities Division by other state securities agencies and/or law enforcement organizations regarding Brown or ISI, its registered representatives, independent contractors, employees and/or other agents.
6. Copies of any documents that concern or reflect any contacts or communications with other state securities agencies and/or law enforcement organizations regarding Brown or ISI, its registered representatives, independent contractors, employees and/or other agents.
7. Documents sufficient to identify the dates upon which the Securities Division learned of the proceedings referred to in Paragraphs 15, 17, 18, 23-26, 29, 32 and 34 of the Notice.
8. Documents related to any Securities Division policies, procedures, manuals and/or guidelines for handling calls from the public that are referred to a Securities Division attorney or investigator.
9. Schedule of Securities Division attorneys and investigators "of the day" and/or Division attorneys or investigators who were designated to receive inquiries from the public from January 1, 1999 through June 30, 1999.
10. Copies of all notes made by Wendy Coy of any conversations she had with Brown on or about April 1999 or at any time.
11. Documents sufficient to identify the name and outcome of any case Wendy Coy worked on from October 15, 1990 through December 31, 2000 that involved allegations related to the offer and/or sale of telephones.
12. Personnel file for Wendy Coy.

1 13. Documents sufficient to identify any other enforcement actions brought by the Securities
2 Division within the past ten (10) years against a brokerage firm in which the firm's
3 compliance department was aware of and approved the outside business activity at issue.


4 14. For the period from January 1, 1994 to the present, all no-action letters issued by the
5 Securities Division related to the issue of whether the purchase of telephones or telephone
6 programs constituted a security within the meaning of the Arizona Securities Act.

7 RESPECTFULLY SUBMITTED this 14 day of October, 2003.

8
9 FOWLER WHITE BOGGS BANKER P.A.
10 Burton W. Wiand
11 501 East Kennedy Blvd., Suite 1700
12 Tampa, Florida 33602

13 AND

14 ROSHKA HEYMAN & DeWULF, PLC

15 By 
16 Alan S. Baskin
17 Laura Schoeler
18 One Arizona Center
19 400 East Van Buren Street, Suite 800
20 Phoenix, Arizona 85004

21 Attorneys for Respondent
22 InterSecurities, Inc.

23 ORIGINAL and 13 COPIES of the foregoing
24 hand-delivered this 14 day of October, 2003 to:

25 Docket Control
26 Arizona Corporation Commission
27 1200 West Washington Street
Phoenix, AZ 85007

1 COPY of the foregoing hand-delivered
this 7th day of October, 2003 to:

2 Matthew Neubert
3 Director of Securities
Securities Division
4 Arizona Corporation Commission
1300 W. Washington Street
5 Phoenix, AZ 85007

6 Philip J. Dion III, Esq.
7 Administrative Law Judge
Arizona Corporation Commission
8 1200 W. Washington Street
Phoenix, AZ 85007

9 Pamela Johnson
10 Securities Division
Arizona Corporation Commission
11 1300 W. Washington, 3rd Floor
12 Phoenix, AZ 85007

13 COPY of the foregoing mailed
14 this 7th day of October, 2003 to:

15 Brian J. Schulman, Esq.
Kutak Rock LLP
16 8601 N. Scottsdale Road, Suite 300
Scottsdale, AZ 85253
17 *Attorneys for Gregory Russell Brown
and Karen Brown*

18
19 

20 intersecurities.acc/pld/req for prod.doc
21
22
23
24
25
26
27

EXHIBIT B

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
 MIKE GLEASON
 KRISTIN K. MAYES



7 In the matter of:)

8 INTERSECURITIES, INC.)
9 570 Carillon Parkway)
10 St. Petersburg FL 33716-1202)

11 GREGORY RUSSELL BROWN AND KAREN)
12 BROWN, husband and wife)
13 16417 South 15th Drive)
14 Phoenix AZ 85045)
 CRD #2233684)

 Respondents.)

DOCKET NO. S-03482A-03-0000

**SECURITIES DIVISION'S
RESPONSE TO RESPONDENT
INTERSECURITIES, INC.'S
FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

15 **PLAINTIFF SECURITIES DIVISION'S RESPONSE AND OBJECTIONS**
16 **TO MUTUAL BENEFITS CORPORATION'S**
17 **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

18 The Securities Division ("Division") of the Arizona Corporation Commission hereby
19 responds to Intersecurities, Inc.'s ("ISI") First Request for Production of Documents (the
20 "Request") and produces or otherwise objects to the Request as follows:

21 **Request 1: "The Securities Division's complete investigative file relating to and/or**
22 **resulting in the commencement of Arizona Corporation Commission Docket**
23 **No. S-03482A-03-0000. This should include, but not be limited to, the**
24 **following:**

25 Division Response: The Division objects to this request as over broad and on the grounds that it
26 seeks information that is not relevant to the subject matter in the pending action and which is
protected by the investigative, work-product and attorney-client privileges more particularly
discussed in the objection discussion section below.

- 1 a. All tapes and/or transcripts of tapes and/or memoranda and/or notes
2 and/or transcripts of sworn testimony that in any way memorialize
3 communications between the Securities Division and (i) ISI or Gregory
4 Brown ("Brown") and/or (ii) employees/independent agents/representatives
5 of ISI, including Examinations Under Oath, and all exhibits thereto;

6 Division Response: The Division objects to this request on the grounds of investigative, work-
7 product and attorney-client privileges more particularly discussed in the objection discussion
8 section below. Notwithstanding the foregoing objections, the Division has provided all transcripts
9 of sworn testimony relating to this matter, including Examinations Under Oath, and all exhibits
10 thereto.

- 11 b. All tapes and/or transcripts of tapes and/or memoranda and/or notes
12 and/or transcripts of sworn testimony that in any way memorialize
13 communications between the Securities Division and any entity or
14 individual interviewed and/or contacted in connection with the Securities
15 Division's investigation of ISI or Brown and relating to the allegations set
16 forth in the Notice. This also includes all complaints, correspondence and
17 Examinations Under Oath, and all exhibits thereto;

18 Division Response: The Division objects to this request on the grounds of investigative, work-
19 product and attorney-client privileges more particularly discussed in the objection discussion
20 section below. Notwithstanding the foregoing objections, the Division has and will provide the
21 requested information for all investors and other individuals it expects to call as witnesses in this
22 matter.

- 23 c. All documents in the possession or under the control of the Securities
24 Division relating to ISI or Brown;

25 Division Response: The Division objects to this request as overbroad and on the grounds it seeks
26 information that is not relevant to the subject matter in the pending action and which is protected
27 by the investigative, work-product and attorney-client privileges more particularly discussed in the
28 objection discussion section below. Notwithstanding the foregoing objections, the Division has
29 provided the requested information relating to this matter except for those documents to which the
30 Division objects for the reasons set forth in the objection discussion section below.

- 31 d. All affidavits and statements provided by individuals interviewed or
32 contacted by the Securities Division relating to the allegations set forth in
33 the Notice and/or relating to ISI or Brown;

1 Division Response: The Division objects to this request as overbroad and on the grounds it seeks
2 information that is not relevant to the subject matter in the pending action and which is protected
3 by the investigative, work-product and attorney-client privileges more particularly discussed in the
4 objection discussion section below. Notwithstanding the foregoing objections, the Division has
5 provided the requested information relating to this matter.

6 **e. All correspondence regarding or referring to ISI or Brown;**

7 Division Response: The Division objects to this request as overbroad and on the grounds it seeks
8 information that is not relevant to the subject matter in the pending action and which is protected
9 by the investigative, work-product and attorney-client privileges more particularly discussed in the
10 objection discussion section below. Notwithstanding the foregoing objections, the Division has
11 and will provide such documentation except for those documents to which the Division objects for
12 the reasons set forth in the objection discussion section below.

13 **f. All documents evidencing telephone calls made by the Securities Division or**
14 **anyone acting on its behalf to any of the alleged "investors" as set forth in**
15 **the Notice, including, but not limited to, (i) documents sufficient to identify**
16 **each telephone call made by the Securities Division, (ii) who authorized**
17 **each telephone call, (iii) who placed the telephone calls, (iv) the scripts or**
18 **outlines used by the individuals who placed or received these calls; and (v)**
19 **any notes, transcripts, tapes or other memoranda memorializing the**
20 **telephone calls;**

21 Division Response: The Division objects to this request on the grounds of the investigative,
22 work-product and attorney-client privileges more particularly discussed in the objection discussion
23 section below.

24 **g. All documents sufficient to identify the "49" Arizona investors referred in**
25 **Paragraph 8 of the Notice. Said documents should include the name,**
26 **address, telephone number and/or email address for these individuals, and**
the date and amount of each investment;

Division Response: Respondent is asking for information it already has in its possession.
Respondent furnished the Division with investor lists. However, the Division has or will provide
such documentation to the extent that it is in the Division's possession except for those documents
to which the Division objects for the reasons set forth in the objection discussion section below.

h. All subpoenas issued by the Securities Division in this matter and all documents provided in response to said subpoenas.

Division Response: The Division has or will provide the requested documents, if any.

Request 2: Copies of all other documents obtained during the Securities Division's investigation that are not specifically referred to in Request No. 1(a-h) above.

Division Response: The Division repeats its prior objections on the grounds the request is overbroad and seeks information that is not relevant to the subject matter in the pending action and which is protected by the investigative, work-product and attorney-client privileges more particularly discussed in the objection discussion section below.

Request 3: Copies of all documents in the possession or under the control of the Securities Division relating to the investments or accounts of the "investors" referred to in the Notice.

Division Response: The Division has furnished the requested documents.

Request 4: Copies of all documents provided by the Securities Division to other state securities agencies and/or law enforcement organizations regarding Brown or ISI, its registered representatives, independent contractors, employees and/or other agents.

Division Response: The Division objects to this request on the grounds that the information sought by Respondent is not relevant to the subject matter in the pending action and which is protected by the investigative and work-product privileges more particularly discussed in the objection discussion section below.

Request 5: Copies of all documents provided to the Securities Division by other state securities agencies and/or law enforcement organizations regarding Brown or ISI, its registered representatives, independent contractors, employees and/or other agents.

Division Response: The Division objects to this request on the grounds that the information sought by Respondent is not relevant to the subject matter in the pending action and which is protected by the investigative privilege more particularly discussed in the objection discussion section below. Notwithstanding the foregoing objections, the Division has or will provide the requested documents to the extent that they may be used as exhibits in any hearing of this matter.

1 **Request 6: Copies of any documents that concern or reflect any contacts or**
2 **communications with other state securities agencies and/or law enforcement**
3 **organizations regarding Brown or ISI, its registered representatives,**
4 **independent contractors, employees and/or other agents.**

5 Division Response: The Division objects to this request on the grounds that the information
6 sought by Respondent is not relevant to the subject matter in the pending action and which is
7 protected by the investigative, work-product and attorney-client privileges more particularly
8 discussed in the objection discussion section below. Notwithstanding the foregoing objections, the
9 Division has or will provide the requested documents to the extent that they may be used as
10 exhibits in any hearing of this matter.

11 **Request 7: Documents sufficient to identify the dates upon which the Securities Division**
12 **learned of the proceedings referred to in Paragraphs 15, 17, 18, 23-26, 29, 32**
13 **and 34 of the Notice.**

14 Division Response: The Division has or will provide the requested documents to the extent that
15 they are in the Division's possession.

16 **Request 8: Documents related to any Securities Division policies, procedures, manuals**
17 **and/or guidelines for handling calls from the public that are referred to a**
18 **Securities Division attorney or investigator.**

19 Division Response: The Division objects to this request on the grounds it seeks information that
20 is protected by the attorney-client privilege. Notwithstanding the foregoing objection, the Division
21 has or will provide the requested information relating to this matter except for those documents to
22 which the Division objects for the reasons set forth in the objection discussion section below.

23 **Request 9: Schedule of Securities Division attorneys and investigators "of the day" and/or**
24 **Division attorneys or investigators who were designated to receive inquiries**
25 **from the public from January 1, 1999 through June 30, 1999.**

26 Division Response: The Division has provided the requested document.

Request 10: Copies of all notes made by Wendy Coy of any conversations she had with
Brown on or about April 1999 or at any time.

Division Response: There are no documents responsive to this request.

Request 11: Documents sufficient to identify the name and outcome of any case Wendy Coy
worked on from October 15, 1990 through December 31, 2000 that involved
allegations related to the offer and/or sale of telephones.

1 Division Response: Any such documents are public records, which are available for inspection
2 and review at the offices of the Docket Control of the Arizona Corporation Commission.
3 Notwithstanding the foregoing, *see* Decision Nos. 59549, 59550, and 59551.

4 **Request 12: Personnel file for Wendy Coy.**

5 Division Response: The Division objects to this request on the grounds that it seeks information
6 that is not relevant to the subject matter in the pending action, and disclosure of information that is
7 precluded by law pursuant to A.A.C. Rule R2-5-105.

8 **Request 13: Documents sufficient to identify any other enforcement actions brought by the**
9 **Securities Division within the past ten (10) years against a brokerage firm in**
10 **which the firm's compliance department was aware of and approved the**
outside business activity at issue.

11 Division Response: The Division objects to this request on the grounds that it seeks information
12 that is not relevant to the subject matter in the pending action. Notwithstanding the foregoing
13 objection, the Division is not aware of any documents responsive to this request. If there are any
14 such documents, they are public records available for the convenience of inspection and review at
15 the offices of the Docket Control of the Arizona Corporation Commission.

16 **Request 14: For the time period from January 1, 1994 to the present, all no-action letters**
17 **issued by the Securities Division related to the issue of whether the purchase of**
18 **telephones or telephone programs constituted a security within the meaning of**
the Arizona Securities Act.

19 Division Response: There are no documents responsive to this request. Notwithstanding the
20 foregoing, no action letters are readily available to the public through various legal resources,
21 including CCH and Westlaw. A table of no action letters is available on the Division's web site.

22 **Objection Discussion**

23 The Division objects to Respondent's requests on several grounds. First, The Division
24 objects on the grounds that there is no right to discovery in an administrative contested case
25 proceeding. A.R.S. § 41-1062(4) states that "no subpoenas, depositions or other discovery shall be
26 permitted in contested cases except as provided by agency rule or this paragraph." Emphasis added.

1 The Rules of Practice and Procedure Before the Corporation Commission (the "Commission's
2 Rules") do not provide for "other discovery", therefore, Respondent has no right to this
3 information. While Respondent may argue that the Arizona Rules of Civil Procedure ("ARCP")
4 apply to this proceeding because the Commission's Rules do not set forth a procedure for "other
5 discovery, this is not the case. Commission Rule R14-3-101 states that "[i]n all cases in which
6 procedure is set forth neither by law, nor by these rules, nor by regulations or orders of the
7 Commission, the Rules of Civil Procedure...shall govern." The ARCP does not apply because by
8 law "other discovery" is not permitted under A.R.S. § 41-1062(4).

9 The Division next objects on the grounds of over breadth. Many of Respondents requests,
10 including, but not limited to, requests Nos. 1, 1 c., and 2, are blanket requests that lack specificity
11 and are too sweeping and without sufficient detail to comply with requirements as to designation.
12 *Dean v. Superior Court*, 84 Ariz. 110 (1958). The over breadth of these requests seeks documents
13 that are not relevant to the subject matter in the pending action and which are properly protected by
14 other privileges such as the investigative and work product privileges.

15 With respect to Request Nos. 1., 1b., 1c., 1d., 1e., 1f., 2, 4, 5, and 6, the Division objects on
16 the grounds that Respondent seeks information that is protected from disclosure by the
17 investigative privilege. *See, e.g., State ex rel. Corbin v. Superior Court*, 99 Ariz. 383 (1966); *City*
18 *of Tucson v. Superior Court*, 167 Ariz. 513 (1991). The investigative privilege belongs to the
19 government and serves public law enforcement interests. *See, State v. Tisnado*, 105 Ariz. 23
20 (1969). Documents requested by Respondent contain information involving investigative
21 techniques and assessments and the identities of witnesses and law enforcement personnel and are
22 thus, subject to the privilege. Especially with respect to Respondent's Requests Nos. 4, 5 and 6, the
23 privilege exists, among other things, to prevent interference with investigations, witness
24 intimidation or to allow the target to construct defenses. By seeking information conveyed to or
25 received from other jurisdictions, Respondent is attempting to learn about other possible
26

1 investigations using this case to circumvent confidentiality provisions in other jurisdictions and to
2 achieve ends it cannot otherwise achieve.

3 Furthermore, where government investigative files are made confidential by statute, they
4 have been held to be non-discoverable. *See, Lipschultz v. Superior Court*, 128 Ariz. 16 (1981).
5 Division investigative documents are confidential by statute. Under A.R.S. § 44-2042 all
6 information and documents obtained by the Division during the course of "any examination or
7 investigation are confidential unless the names, information or documents are made a matter of
8 public record." The information Respondent seeks was obtained during the course of the
9 Division's investigation of Respondent and is not a matter of public record.

10 With respect to Request Nos. 1., 1b., 1c., 1d., 1e., 1f, 2, 4, and 6, the Division objects on the
11 grounds that Respondent seeks information that is protected from disclosure by the work product
12 privilege. "The privilege ... prevents an adversary from obtaining documents which contain the
13 mental impressions, conclusions, opinions or legal theories of an attorney or other representative of
14 a party concerning the litigation." *State ex rel. Corbin v. Superior Court*, 140 Ariz. 123, 129, 680
15 P.2d 833, 830 Ariz. App. 1984. *See, also, Brown v. Superior Court In and For Maricopa County*,
16 137 Ariz. 327 (1983). The documents or other things requested by Respondent were prepared by
17 the Division and contain staff interpretations and/or mental impressions of investors' investment
18 experiences with Respondent. These interviews, discussions and document were conducted and
19 prepared in anticipation of litigation and/or preparation for hearing.

20 Finally, with respect to Request Nos. 1., 1b., 1c., 1d., 1e., 1f, 2, 4, 5, and 6, the Division
21 objects on the grounds Respondent seeks information that is protected from disclosure by the
22 attorney-client privilege.

23 RESPECTFULLY SUBMITTED this 6th day of January, 2004.

24
25 By:


Pamela T. Johnson

Attorney for the Securities Division of
the Arizona Corporation Commission

1 ORIGINAL and 13 copies of the foregoing
2 hand-delivered this 6th day of January, 2004 to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix AZ 85007

7 COPY of the foregoing hand-delivered
8 this 6th day of January, 2004 to:

9 Philip J. Dion, III, Esq.
10 Administrative Law Judge
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix AZ 85007

14 COPY of the foregoing mailed
15 this 6th day of January, 2004 to:

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